

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION**

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2021-0504**

**FOR**

**JAKE aka JAKOB WESTSTEYN AND STEPHEN WESTSTEYN**

**JG WESTSTEYN DAIRY, GLENN COUNTY**

**PROSECUTION TEAM'S LEGAL AND TECHNICAL ANALYSIS**

**Introduction**

On 22 March 2021, the Central Valley Water Board Prosecution Team issued Administrative Civil Liability Complaint (ACLC) R5-2021-0504 to Jake aka Jakob (Jake) Weststeyn and Stephen Weststeyn (ACL Dischargers). The ACLC proposes \$30,000 in liability for the ACL Dischargers' failure to submit certain monitoring and technical reports required by the JG Weststeyn Dairy (Dairy<sup>1</sup>) Waste Discharge Requirements Order No. R5-2009-0082 (WDRs). The ACL Dischargers have not waived their right to a hearing, and pursuant to California Water Code (Water Code) section 13323, a hearing has been scheduled before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within 90 days of issuance of ACLC R5-2021-0504. The Prosecution Team has prepared an Administrative Civil Liability Order (ACLO) in the amount of \$30,000 and recommends, for the reasons discussed herein, that the Central Valley Water Board adopt the ACLO as proposed.

Jake and Stephen Weststeyn are appropriately named as dischargers in the ACLC because they were agents of the permittees, and, based on the language of WDRs R5-2009-0082, were required to comply with the reporting requirements of the WDRs during the relevant time period.

WDRs R5-2009-0082, including the associated Monitoring and Reporting Program (MRP), require that the Dischargers (a) submit technical reports relating to construction and operation of the Dairy, (b) conduct monitoring, and (c) submit monitoring reports on a regular basis. The ACLC is based on the Dischargers' failure to comply with these requirements.

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<sup>1</sup> The Prosecution teams notes that at the time of the violations alleged in the ACLC, the WDRs defined the term "facility" as the Weststeyn Dairy. The WDRs also described the dairy facility as follows: "The facility is located on 1382 acres, all of which is owned by Bert Weststeyn. Land under agricultural production at the facility is located on Assessor's Parcel Numbers 014-170-021, 014-170-028, 014-170-039, 014-170-041, 014-170-042, and 014-170-043." All of the alleged violations arise from conduct which took place at this dairy facility. Due to subsequent changes in the permittees on the WDRs, the Prosecution Team notes that in various documents the Dairy is referred to as JG Weststeyn Dairy, the Weststeyn Dairy, or Weststeyn Dairy Farms.

Based upon this plain language of the WDRs, the Prosecution Team seeks to impose liability upon Jake and Stephen Weststeyn, who were agents of the permittees during the relevant time period and are the individuals who are responsible for the Dairy's compliance with the WDRs.

## **Legal Analysis**

### WDRs R5-2009-0082

In 2009, the Central Valley Water Board adopted WDRs Order No. R5-2009-0082, "Individual Waste Discharge Requirements for Bert Weststeyn and Weststeyn Dairy Farms, DBA Weststeyn Dairy." The Advisory Team's cover letter to the hearing procedures for this case interprets the language in the WDRs to identify the "dischargers" regulated by WDRs R5-2009-0082 as "'Weststeyn Dairy Farms,' an unspecified corporate entity (or fictitious business name of another<sup>2</sup>), as Facility owner, and Bert Weststeyn as Facility Operator."

The WDRs provide the following: "It is hereby ordered that Weststeyn Dairy Farms and Bert Weststeyn, dba Weststeyn Dairy, its **owners, tenants, agents, successors, and assigns**, pursuant to California Water Code Sections 13260, 13263, and 13267 and in order to meet the provisions contained in Division 7 of the California water Code and regulations and policies adopted there under shall comply with" the WDRs, including the provisions that relate to the Dairy's Monitoring and Reporting Program (MRP). (Exhibit 1) (emphasis added). Together, these provisions regulate a broader scope of persons than those individuals and entities who are named in the original Report of Waste Discharge (ROWD) or subsequent name change orders adopted by the Central Valley Water Board. This language allows the Central Valley Water Board to direct its enforcement actions at parties who are acting on behalf of the Dairy, in a capacity such as agent, to ensure that the persons who are actually responsible for violations are subject to any liability resulting from that conduct.

### History of JG Weststeyn Dairy

JG Weststeyn Dairy, formerly known as Weststeyn Dairy Farms, began operations in or around 2011.

On or about March 26, 2016, Bert Weststeyn submitted two "Form[s] for Transfer of Owner/Operator Coverage Under Reissued Waste Discharge Requirements General Order R5-2013-0122" to the Central Valley Water Board, requesting to transfer owner/operator coverage for both the subject Dairy and another dairy that is regulated by the Reissued Dairy General Order. These forms stated that the "current owners/operators," meaning the

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<sup>2</sup> The Prosecution Team sought records from the County of Glenn related to the Fictitious Business Name. There is no Fictitious Business Name statement on file with Glenn related to Weststeyn Dairy Farms, or other similarly named entity.

permittees on the WDRs **before** any change in ownership or operation went into effect, were Bert Weststeyn and Jake Weststeyn. The forms requested that Jake Weststeyn be identified as the new owner and operator of the Dairy, and the new permittee on the WDRs. (Exhibit 2).

Because this Dairy was covered by individual WDRs rather than the Reissued Dairy General Order, however, a transfer of owner/operator had to be completed through another form: an "Application/Report of Waste Discharge General Information Form for Waste Discharge Requirements or NPDES Permit," commonly referred to as "Form 200." Although Stephen Weststeyn did submit two Form 200s in December 2020, due to errors with these forms and a lack of responsiveness from the Dairy's representatives, the owners and operators on the WDRs were not fully updated until the Board's April 2021 hearing. (See Exhibits 3-7). The most recent Name Change Order adopted by the Central Valley Water Board on April 22, 2021 identifies the Dairy as JG Weststeyn Dairy, identifies the dairy owner and operator as JG Weststeyn Dairy, LP, and identifies the land owner as the Weststeyn 2015 Irrevocable Land Trust (Trust). (Exhibit 7).

Since approximately 2016, Jake and Stephen Weststeyn have held themselves out as agents of the Dairy by participating in inspections, submitting required reporting, and responding to communications from the Central Valley Water Board. Therefore, both Jake and Stephen Weststeyn are liable for the alleged violations described in ACL R5-2021-0504 as agents of Bert Weststeyn and Weststeyn Dairy Farms, DBA Weststeyn Dairy.

#### Legal Standard on Agency

Under California Civil Code section 2295, "[a]n agent is one who represents another, called the principal, in dealings with third persons." (Cal. Civ. Code § 2295). California recognizes two types of agency: ostensible and actual. (Cal. Civ. Code § 2297). "An agency is actual when the agent is really employed by the principal." (Cal. Civ. Code § 2299). "An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him." (Cal. Civ. Code § 2300). The term "representative" is interchangeable with agent. (*Sunset Mill. & Grain Co. v. Anderson* (1952) 39 Cal.2d 773).

Determining whether a person is an agent is generally a question of fact. (*ING Bank, FSB v. Chan Seob Ahn*, 758 F.Supp.2d 936 (N.D. Cal. 2010)). Whether or not an agency relationship exists can be inferred or implied from the conduct of the parties and the circumstances surrounding the events. (*Ralphs Grocery Co. v. Victory Consultants, Inc.*, App. 4 Dist. (2017)). In California, there are three essential characteristics that should be considered to determine whether an agency relationship exists: (1) an agent or apparent agent holds power to alter the legal relationships between the principal and third persons, and between the principal and himself; (2) an agent is fiduciary with respect to matters within

the scope of the agency; and (3) a principal had the right to control the conduct of the agent with respect to matters entrusted to him. (*Gerritsen v. Warner Bros. Entertainment Inc.*, C.D. Cal.2015, 116 F.Supp.3d 1104).

The record in this case supports a finding that Jake and Stephen Weststeyn are ostensible agents of the permittees of WDRs R5-2009-0082, Weststeyn Dairy Farms and Bert Weststeyn. Therefore, the ACL appropriately names Jake and Stephen Weststeyn, as agents of the permittees of the WDRs, as dischargers on ACL R5-2021-0504.

1. Jake aka Jakob Weststeyn is an agent of the permittees named in WDRs R5-2009-0082, and therefore is liable for the violations alleged in ACL R5-2021-0504.

Jake Weststeyn has consistently held himself out to the Central Valley Water Board as an owner of the Dairy and has undertaken various acts on behalf of the Dairy to ensure its compliance with WDRs R5-2009-0082. Jake Weststeyn identifies himself as an owner, operator, and contact for the Dairy in the following documents: Annual Reports (8-12); Groundwater Monitoring Reports (Exhibits 16-18, 22); communications with Central Valley Water Board staff (Exhibits 13, 20, 34, 39, 52, 57); inspection reports (Exhibits 25-26, 28-29, 32-33, 35, 40-48, 50-51); responses to notices of violation (NOVs) and other enforcement actions (Exhibits 31, 38); and other technical reports (Exhibits 54-56).

To review these documents in greater detail, Jake Weststeyn signed all of the Annual Reports submitted between 2016 and 2021. These Annual Reports all identify Jake Weststeyn as the owner of the Dairy and are submitted under his signature in order to satisfy the Dairy's reporting requirements. Additionally, lab analyses included in those reports are directed to Jake, which is indicia of his status as agent because he was directing official business on behalf of the Dairy. Likewise, all of the Dairy's Groundwater Monitoring Reports since 2017 which were prepared on behalf of JG Weststeyn Dairy and list Jake Weststeyn as the contact person. (Exhibits 16-18, 22).

The Central Valley Water Board's interactions involving the Dairy are also consistent with its understanding that Jake is an agent of Weststeyn Dairy Farms, and that Jake is **actually** responsible for it's the Dairy's day-to-day operations and compliance with the WDRs. For instance, the 2018 Cleanup and Abatement Order R5-2018-0004 (CAO) was issued to Jake Weststeyn DBA Weststeyn Dairy Farms based on the Central Valley Water Board's conclusion that Jake Weststeyn, as an individual person, was doing business as Weststeyn Dairy Farms. (See Exhibit 37). Jake Weststeyn did not dispute this conclusion and conducted the work to comply with the CAO as well as submitting required reports pursuant to the CAO. In response to those documents, Jake Weststeyn, on behalf of the Dairy, provided written responses to the Central Valley Water Board. (Exhibit 38).

Other responses to NOV's were submitted to the Central Valley Water Board on Jake Weststeyn's behalf. For example, in 2017, a response to a NOV was submitted "on behalf of the dairy's owner/operator Jake Weststeyn." (Exhibit 31).

Together, these facts show that Jake Weststeyn was, and continues to be, an agent of the permittees on the WDRs. Therefore, he is regulated by the WDRs and should be deemed liable for the proposed ACL.

2. Stephen Weststeyn is an agent of the permittees named in WDRs R5-2009-0082, and therefore is liable for the violations alleged in ACL R5-2021-0504.

Stephen Weststeyn has consistently acted as the agent of the permittees named in WDRs R5-2009-0082 by submitting required reporting, responding to communications from the Central Valley Water Board, and otherwise acting in a manner that indicates he is responsible for day to day operations and compliance at the Dairy.

Stephen Weststeyn is identified as the contact person for the facility, facility owner, facility operator, and the owner of the land. (Exhibits 4-5). He is also identified as the contact person to which legal notice may be served and the contact person for billing. (Exhibit 5). The Form 200 was submitted under Stephen's signature. (Exhibits 4-5)

Like Jake Weststeyn, Stephen Weststeyn signed all of the Annual Reports submitted between 2016 and 2021. These Annual Reports identify Stephen Weststeyn as the operator of the Dairy and are submitted under his signature in order to satisfy the Dairy's reporting requirements. (Exhibits 8-12). Stephen Weststeyn is also identified as the Dairy's contact in the Groundwater Monitoring Reports and other technical reports. (Exhibits 16-18, 22, 53-54, 56). Stephen Weststeyn, also responded to the CAO. (Exhibit 38).

During inspections with Central Valley Water Board staff, Stephen Weststeyn has played an active role. Stephen Weststeyn has provided information to Central Valley Water Board staff, during inspections and other meetings, to explain Dairy operations, and efforts undertaken to comply with WDRs R5-2009-0502. Statements made during inspections indicate that Stephen is responsible for day-to-day operations at the Dairy and has significant responsibility for ensuring that the Dairy complies with Central Valley Water Board requirements. (See Exhibits 33, 35, 40-48, 50-51). These statements affirm that Stephen is an agent of the Dairy because he holds himself out as a representative of the Dairy to regulatory agencies.

Stephen Weststeyn has been particularly involved in communications, including representing the Dairy in confidential settlement negotiations with the Prosecution Team, related to the ACLC and the concurrently proposed Cease and Desist Order R5-2021-XXXX. (Exhibits 13,

57). Stephen also regularly makes representations on behalf of "Weststeyn Dairy Farms" in industry publications and social media. (See Exhibits 75-77).

Together, these facts show that Stephen Weststeyn was, and continues to be, an agent of the Dairy regulated by the WDRs.

### **Technical Arguments**

WDRs Provision F, Required Reports and Notices, requires, pursuant to Water Code section 13267, preparation and submission of three types of annual monitoring reports (Annual Reports, Groundwater Reports, and Storm Water Reports) as well as eight separate technical reports. Pursuant to Water Code section 13268, failure to submit technical reports required by Water Code section 13267 subjects a discharger to an administrative civil liability of up to \$1,000 per day for each missing or incomplete report.

#### 1. Status of Monitoring and Technical Reports

The MRP states that Annual Reports are due by 15 January each year and are to describe the facility operations from 1 November through 31 October of the previous year. The first Annual Report was due by 15 January 2011. However, the Annual Reports have never been submitted for the years 2010 through 2015. Although Annual Reports have been submitted for the years 2016 to 2020, all the reports were late except the 2018 Annual Report. Although the Prosecution Team could assess penalties for all the late reports, this ACL only contains penalties for the late submittal of the 2020 Annual Report. The 2020 Annual Report was due on 15 January 2021. After repeated reminders, (Exhibit 13) it was submitted on 3 March 2021.

The MRP states that Groundwater Reports are due by 30 June and 30 December of each year and are to include the results of semi-annual monitoring of two domestic wells, seven agricultural supply wells, and three groundwater monitoring wells. The first report was due on 30 June 2010. However, the ACL Dischargers did not submit either of the semi-annual Groundwater Reports for the years 2010 through 2016. For 2017, one report was submitted on 15 January 2018, covering both semi-annual periods. One report each for 2018 and 2019 was submitted on 20 November 2020. For 2020, neither of the reports was submitted as of the date of the ACLC (Exhibit 21). The 2017 to 2019 reports only contain results for the three groundwater monitoring wells; the ACL Dischargers did not sample the other wells required by the WDRs. Although the Prosecution Team could assess penalties for the missing reports from 2010 through 2016 and the incomplete reports from 2017 to 2019, this ACL only contains penalties for the non-submittal of the Second Semiannual 2020 Groundwater Report, which was due by 30 December 2020.

The MRP states that Storm Water Reports are due by 30 June of each year and are to include the results of the previous year's storm water monitoring. The first report was due by 30 June 2010. In the 11 years since the first report was due, the ACL Dischargers have *never* submitted a Storm Water Report and there is no indication that they have ever completed the storm water monitoring required by the MRP. Although the Prosecution Team could propose penalties for the non-submittal of Storm Water Reports from 2010 through 2020, this ACL only includes penalties for the non-submittal of the 2020 Storm Water Report, which was due by 30 June 2020.

Section F of the WDRs lists the eight technical reports that must be submitted pursuant to Water Code section 13267. The ACL Dischargers submitted three of these reports (Waste Management Plan, Nutrient Management Plan, and Wastewater Lagoon Design Report) prior to adoption of the WDRs. The Wastewater Lagoon Post Construction Report was submitted appropriately. The Salinity Report was submitted in response to the November 2020 Notice of Violation (see below). Although this document was not signed by the ACL Dischargers, the Prosecution Team has elected not to include this as a violation. The ACL Dischargers have never submitted the Monitoring Well Installation Report for the fourth groundwater monitoring well, but the Prosecution Team has determined that this issue will best be addressed through the proposed Cease and Desist Order.

This ACL contains penalties for failure to submit the remaining two technical reports, the Setback and Buffer Analysis and Irrigation Well Study (due by 30 June 2017) and the Composting Barn Soils Report (due by 30 December 2017).

## 2. Notice of Violation and Opportunity to Submit Reports

The Prosecution Team met with Stephen Weststeyn and other Dairy representatives via videoconference on 22 October 2020 to discuss both the upcoming Cease and Desist Order (CDO) and the missing technical and monitoring reports. Following the meeting, on 28 October 2020 the Prosecution Team issued a Notice of Violation to Jake and Stephen Weststeyn (NOV; Exhibit 52). The NOV described the deficient and missing reports required by the WDRs and provided the ACL Dischargers with an opportunity to produce the outstanding reports. Groundwater monitoring reports were to be submitted by 20 November 2020 and the other missing reports by 30 November 2020. If a missing report was not immediately available, then the ACL Dischargers had the option of proposing a date by which to submit it.

In response to the NOV, the Dairy's consultant submitted the unsigned Salinity Report (Exhibit 56), the 2018 Groundwater Monitoring Report (covering both semi-annual events; Exhibit 17), and the 2019 Groundwater Monitoring Report (covering both semi-annual events; Exhibit 18).

An unsigned document titled "Setbacks, Buffers, and Other Alternatives to Protect Surface Waters" was submitted (Exhibit 54) in November 2020, but it does not contain *any* of the information required by WDRs Provision F.1.i for the Setback and Buffer Analysis and Irrigation Well Study. The ACL Dischargers did not propose a date by which to submit a compliant report. Therefore, the Setback and Buffer Analysis and Irrigation Well Study technical report remains outstanding and this ACL proposes penalties for its non-submittal.

The Dairy's consultant also submitted two analytical laboratory reports (Exhibit 55) for soil samples collected in September 2017. These samples were collected after the composting barns had been in use for over six years. The laboratory reports do not contain the information required by WDRs Provision F.1.j. for the Composting Barn Soils Report. The ACL Dischargers did not propose a date by which to submit a responsive report. Therefore, the Composting Barn Soils Report remains outstanding and this ACL proposes penalties for its non-submittal.

### 3. Calculation of Liability

The Prosecution Team followed the procedure described in the State Water Resources Control Board's 2017 Water Quality Enforcement Policy (2017 Enforcement Policy; Exhibit 70) to determine an appropriate penalty for the five violations. The process, and justification for each Penalty Factor, is described in detail in Attachment A to the ACL. A brief description of the Penalty Factors is provided below, followed by a table summarizing the penalty calculations.

- The potential for harm to beneficial uses factor ranges from minor to major. All five violations were assigned a "moderate" potential for harm because the failure to submit the reports has substantially impaired Central Valley Water Board staff's ability to evaluate the extent and severity of the water quality impacts posed by the ACL Dischargers' ongoing dairy operations.
- The deviation from requirement factor ranges from minor to major. A "major" deviation was assigned to Violations 1, 3, 4, and 5 because the reports have not been submitted, thereby rendering the applicable requirements ineffective. A "minor" deviation is appropriate for Violation 2 because the 2020 Annual Report was eventually submitted.
- The number of days of violation is usually calculated from the date that the report was required per the WDRs through the date that the ACL Complaint was issued. However, the Prosecution Team used its discretion to significantly reduce the days of violation by only calculating the days from the date the report was required per the October 2020 NOV (either 20 November 2020 or 30 November 2020, depending on the report) through the date that ACLC R5-2021-0504 was issued (22 March 2021). The



Enforcement Policy provides that, for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis if certain findings are made. For all five violations, the Prosecution Team finds that the failure to submit the monitoring report or technical document does not result in an economic benefit that can be measured on a daily basis. Therefore, the Prosecution Team compressed the days of violation following the process in the Enforcement Policy.

- The culpability multiplier ranges from 0.75 to 1.5, with a higher value for intentional or negligent violations. For all five violations, a culpability multiplier of 1.3 was assigned because the WDRs clearly describe the required reports, the ACL Dischargers have been fully involved in operating the Dairy, Central Valley Water Board staff have been played an active role in oversight of this Dairy with 27 inspections since 2015, and the October 2020 NOV provided the Dischargers with an opportunity to submit the missing reports.
- The history of violation multiplier has been assigned a 1.0 for all five violations because the ACL Dischargers do not have an adjudicated history of violations.
- The cleanup and cooperation multiplier ranges from 0.75 to 1.5 and reflects the degree to which a discharger voluntarily cooperates and returns to compliance. For all five violations, a multiplier of 1.1 has been assigned, because despite multiple notifications of violations and outreach by the Central Valley Water Board, the ACL Dischargers have not cooperated or returned to compliance with the WDRs.

A summary of the five violations, the assigned penalty factors, and the resulting base liability is as follows:

Potential for Harm	Deviation from Requirement	Days of Violation (Compressed)	Culpability	History	Cleanup/ Cooperation	Base Liability
<b>Violation 1: Failure to Submit 2020 Stormwater Report</b>						
moderate	major	112 à 37 days	1.3	1.0	1.1	\$29,100
<b>Violation 2: Failure to Submit 2020 Annual Report by Required Date</b>						
moderate	minor	47 à 33 days	1.3	1.0	1.1	\$11,797
<b>Violation 3: Failure to Submit Second Semiannual 2020 Groundwater Monitoring Report</b>						
moderate	major	83 à 36 days	1.3	1.0	1.1	\$28,314

Potential for Harm	Deviation from Requirement	Days of Violation (Compressed)	Culpability	History	Cleanup/ Cooperation	Base Liability
<b>Violation 4: Failure to Submit Setback and Buffer Analysis and Irrigation Well Study Report</b>						
moderate	major	113 à 37 days	1.3	1.0	1.1	\$29,100
<b>Violation 5: Failure to Submit Compost Barn Soils Report</b>						
moderate	major	113à 37 days	1.3	1.0	1.1	\$29,100

The combined base liability for the five violations is \$127,411.

#### 4. Economic Benefit

Pursuant to Water Code section 13327, the Water Board must consider the economic benefits derived from the acts that constitute the violation. In addition, the 2017 Enforcement Policy states that the civil liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations.” The Prosecution Team used the U.S.EPA’s BEN model and estimated expenses provided by Water Board staff for the costs to monitor storm water, groundwater, and the composting barn soils, and to prepare and submit the technical and monitoring reports. As described in Attachment B to the ACLC, the ACL Dischargers’ economic benefit for failing to complete the required monitoring and failing to submit the required monitoring and technical reports is estimated to be \$15,271. The economic benefit plus 10% is \$16,798, which is the minimum liability for this enforcement action.

#### 5. Ability to Pay

The Prosecution Team has considered the ACL Dischargers’ ability to pay the proposed liability and to continue in business and finds that the ACL Dischargers have the ability to pay the proposed liability, because both of the ACL Dischargers are highly involved in the operation and management of the Dairy. The Dairy is an active business that continues to generate profits and has significant assets associated with it including real estate. (Exhibit 62). According to the most recent Annual Report for the Dairy (Exhibit 12), the Dairy houses approximately 2,000 milk cows, 300 dry cows, 650 bred heifers, 800 heifers, and 550 calves. Publicly available information indicates that the average value of a bred dairy cow is \$1,300 in California; therefore, the ACL Dischargers’ milk and dry cows are an asset of approximately \$2.99 million, with the younger stock are an additional asset. (Exhibit 74).

In addition, public records reveal that Stephen Weststeyn owns a single-family residence in Willows, California. The Real Property Tax Assessor record values the property at \$270,504 in 2019. (Exhibit 68).

The Prosecution Team issued Subpoenas for Financial Records and Documents (Subpoenas) to the ACL Dischargers to get additional information, that is not publicly available, regarding their ability to pay. (Exhibit 66). The ACL Dischargers did not respond to the Subpoenas; therefore, the Prosecution Team's initial finding is limited to publicly available information.

## 6. Proposed Liability

Although the Penalty Calculation Methodology derives a penalty of \$127,411, the Prosecution Team recommends that this amount be reduced in recognition that a Tentative CDO has been issued to those persons who operate and own the Dairy and its associated land. If adopted, the Tentative CDO would require significant investment of resources to correct compliance issues at the Dairy. The Prosecution Team's priority is that the Dairy returns to compliance with the terms of the WDRs and therefore the Prosecution Team proposes a reduction in the penalty to allow the Dairy to prioritize compliance with the WDRs and the Tentative CDO over payment of a higher administrative civil liability.

The Prosecution Team asserts that the goals of the Water Code and Enforcement Policy can be met with a smaller, though still substantial, final liability in the amount of \$30,000. A liability of \$30,000 would recover more than the economic benefit of the ACL Dischargers' noncompliance and would still be adequate to provide a deterrent effect. The proposed liability is less than the statutory maximum liability of \$2,780,000 and greater than the minimum liability of economic benefit plus 10% (\$16,798).

## **Summary**

The Prosecution Team recommends that the Central Valley Water Board issue the proposed ACLO in the amount of \$30,000 to Jake Weststeyn and Stephen Weststeyn.